IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Special Appeal No. 61 of 2004

Date of decision: 2nd March, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 2.3.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 61 of 2004

Secretary,
Uttaranchal Shiksha Evam Pariksha Parishad,
Ram Nagar, District Nainital. …….. Appellant

Versus

Yogesh Kumar S/o Krishana Auta Dhiman,
R/o H.N.O.-177, Gali No. 3,
Ambedkar nagar, Jwalapur,
District Haridwar. ……. Respondent

Mr. V.K. Bist, Senior Advocate assisted by Mr. Ambrish Chatterji, Advocate for the appellant.
Mr. Sanjeev Singh, Advocate for the respondent.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. M.M. Ghildiyal, J.

RJAEEV GUPTA, C.J. (Oral)

Appeallant Uttaranchal Shiksha Evam Pariksha has field this special appeal against the impugned judgment dated 17.08.2008 passed in Writ Petition No. 252 of 2004 (M/S).

2. Respondent Yogesh Kumar filed the writ petition for the following reliefs:

> "a. Issue a order or direction commanding the respondents to produce the records of answer book of Chemistry II paper of petitioner before this Hon'ble Court.
>
> b. Issue a writ, order or direction the respondents to value the answer book of Chemistry II paper of petitioner and in case the petitioner obtained the passing marks in Chemistry II paper then he will be declared pass in Intermediate Examination 2003.
>
> c. Issue any other suitable order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
>
> d. Award costs of the petition."

3. In the writ petition, the petitioner's case was that he appeared in the Intermediate Examination, 2003, When the results for the said examination were declared, the petitioner came to know through internet that he was declared failed on account of being absent in the Second Paper of Chemistry. On the communication from the Principal of the petitioner's college that the petition did appear in the Second Paper of Chemistry which was held on 29.04.2003, the appellant Parishad corrected the mistake and issued another mark sheet dated 18.09.2003 showing that the petitioner secured '00' in the Second paper of Chemistry and not "AA' as was shown earlier. The petition, harboring under an impression that his answer sheets have not been properly evaluated, field the writ petition for the above-mentioned beliefs.

4. The appellant Parishad in their counter affidavit admitted the mistake in showing the petitioner absent in the Second Paper of Chemistry. It was their specific case that the petitioner did not secure any marks in the Second Paper of Chemistry and as such, in the column of marks Obtained '00' was shown.

5. During the course of hearing before the learned Single Judge, a photocopy of the petitioner's answer sheet for the Second Paper of Chemistry was made available. It further transpires from the record that an expert of the subject i.e. Chemistry was asked to evaluate the petitioner's above answer sheet and the said expert awarded only '01' mark. The learned Single Judge, placing reliance on the Division Bench decisions of Allahabad High Court in the cases of Saurabh Kumar Gupta Vs. State of U.P. & others and Kumari Renu Sharma Vs. Madhyamik Shiksha Parishad & another, directed the appellant Parishad to award makers to the petitioner in the Second Paper of Chemistry on the basis of 'Average marking'. It is this direction in the impugned judgment which has led to the filing of the present special appeal at the behest of the appellant Parishad.

6. The appellant's challenge to the impugned judgment is based on the following three-fold submissions:-

i. There is no provision for revaluation in the Regulations under U.P. Intermediate Education Act, 1921;

ii. The Petitioner's case is not covered by the Circular providing for 'Average Marking', as the said provision is applicable only in those cases where the answer sheets are not available for evaluation either on account of having been lost in the transit or for any other reason;

iii. Petitioner, in his writ petition, did not make any prayer for grant of marks on the basis of 'Average Marking'.

7. The learned counsel for the respondent, on the other hand, supported the impugned judgment and contended that the stand of the Parishad has been inconsistent, in as much as, at one stage their case was that the petitioner did not appear in the examination and at the other stage they came out with the case that he secured '00' marks only. The learned counsel further submitted that as the petitioner's original answer sheet was not made available in the Court and only a photocopy thereof was produced before the learned Single Judge, the petitioner's case is fully covered by the Circular providing for grant of marks on the basis of 'Average marking'.

8. Writ petitioner Yogesh Kuamr appeared in the Second Paper of Chemistry held on 29.04.2003, now is not in dispute at all. It is a different matter that at the initial stage, after the declaration of the result, the petitioner was shown failed on account of his absence. As the said mistake stood corrected by the appellant Parishad much before the filing of the writ petition, the petitioner cannot be permitted to take advantage of the appellant's said mistake be it a human error or a computer mistake.

9. We do not find any substance in the petitioner's objection that the petitioner's original answer sheet was not made available before the learned Single Judge and only a photocopy of the same was produced. It was the specific case of the appellant Parishad before the leaned Single Judge that the petitioner's original answer sheet was weeded out within the time prescribed for the said purpose in the Regulations. We also do not find any force in the petitioner's submission that when the appellant parishad could retain a photocopy of the answer sheet, why the original, itself, could not have been retained. We gather from the impugned judgment that the petitioner, who himself was present during the course of hearing before the learned Single Judge, did not dispute that the photocopy of the answer sheet produced in the Court was the photocopy of his answer sheet. In this view of the matter, we are of the opinion that the mere fact that original answer sheet was not made available before the learned Single Judge and only a photocopy thereof was produced, will not in any manner entitle the petitioner for the relief granted by the learned Single Judge.

10. So far as the petitioner's second prayer in the writ petition relating to revaluation of his answer sheet is concerned, admittedly the relevant Regulations do not provide for revaluation. The Apex Court, while considering the scope of issuing a direction for revaluation in the absence of an express provision in that behalf in the Regulations in the case of **Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. parties Bhupehkumar Sheth and others reported in (1984) 4 SCC 27,** observed in para 27 as under:

> "27. The High Corut has relied upon the fact that the University of Bombay and some other Universities have recently made provisions permitting candidates to demand revaluation. In our opinion, this has little relevance for the purpose of deciding about the legal validity of the impugned regulations framed by the Board. We do not know under what circumstances, the

> University of Bombay has decided to recognize a right in the examinees to demand a revaluation. As far as the Board is concerned it has set out in the counter-affidavit the enormity of the task with which it is already faced, namely, of completing twice during each year the process of evaluation and release of results of some 3 lacs of candidates appearing for the S.S.C. and H.S.C. examinations to be held in an interval of only a few months from one another. If the candidates are all to be given inspection of their answer books or the revaluation of the answer papers is to be done in the presence of the candidates, the process is bound to be extremely time consuming and if such a request is made by even about ten per cent of the candidates who will be 30,000 in number, it would involve several thousands of man hours and is bound to throw the entire system out of gear. Further, it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process."

11. The Apex Court in the above case, while outlining the scope of interference by the courts in educational matters, further observed in para 29 as under:

> "29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court

> should also, as far a possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."

12. Thus, it is apparent from the above-quoted dictum of the Apex Court that in the absence of a specific provision for revaluation, the courts should not issue any direction in that behalf.

13. Now, we shall examine the direction by the learned Single Judge for a ward of marks on the basis of 'Average Marking'.

14. It is apparent that the provision for award of marks on the basis of 'Average Marking' would be applicable to those cases only where the answer sheets of a candidate, for one reason or the other, are not available for initial evaluation. In the present case, admittedly, the petitioner's original answer sheets were available for evaluation and were in fact evaluated. It was on the basis of said evaluation that the petitioner was awarded '00' marks. We are not at all impressed by the petitioner's submission that non-availability of the original answer sheet in the Court would attract the provision relating to award of marks on the basis of 'Average marking' because those provisions would be attracted only when the original answer sheets are not available for evaluation at the initial stage itself and not in the Court when the candidate has approached the Court for revaluation.

15. The reliance by the learned Single Judge on the above referred Division Bench decision of Allahabad High Court in the case of Kumari Renu Sharma Vs. Madhyamik Shiksha Parishad & another, is apparently misplaced, as in the above referred case, the original answer sheets of the candidate were not available even for initial evaluation.

16. Fro the foregoing reasons, the impugned judgment cannot be upheld and is liable to be set aside.

17. Therefore, the special appeal is allowed and the impugned judgment dated 17.08.2004 passed in Writ Petition No. 252 of 2004 (M/S) is, hereby, set aside and the writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.) **(Rajeev Gupta, C.J.)**
2.3.2006 **02.03.2006**

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